

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 284

September 23, 1998, 1:53 p.m.
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BANKRUPTCY REFORM/Final Passage

SUBJECT: Consumer Bankruptcy Reform Act . . . H.R. 3150. Final passage, as amended.

ACTION: BILL PASSED, 97-1

SYNOPSIS: As passed, H.R. 3150, the Consumer Bankruptcy Reform Act, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. Details are provided below.

● **Needs-Based Bankruptcy.** Under current law, individuals considering bankruptcy generally proceed under Chapter 7 or Chapter 13. Under Chapter 7, the debtor surrenders those assets which do not qualify for an exemption under the law, and the assets are sold to satisfy (in part) the demands of the creditors. Any deficiency which remains after the sale of the assets is erased ("discharged"). Chapter 13, on the other hand, provides for the development of a repayment plan to repay a portion of the debtor's debts using future earnings. When the debtor has made his payments as required under the repayment plan, any unpaid portion of his debt is discharged. Prior to 1984, an individual contemplating bankruptcy could freely choose between Chapter 7 and Chapter 13. However, in an effort to address concerns about misuse of Chapter 7 by those with the means to repay some of their debts, Congress amended the bankruptcy code in 1984 so that a Chapter 7 bankruptcy case could be dismissed if there were "substantial abuse" of the law. However, only the judge or the bankruptcy trustee, not a creditor, could make a motion alleging "substantial abuse." The 1984 changes did not reduce the rapid increase in the number of Chapter 7 cases. This bill will make four major changes intended to stop the misuse of Chapter 7 proceedings. First, it will allow a bankruptcy judge to dismiss a Chapter 7 case (or convert it into a Chapter 13 case if the petitioner consents) if the system is being "abused" (*not* "substantially abused" as under current law). Second, it will allow any party in interest (creditors) to allege abuse, though creditors will not be permitted to challenge filings by low-income debtors. Third, in considering whether there has been abuse of the system, the court will consider: whether the bankruptcy petition was filed in bad faith; or whether the debtor, based on his current income, can repay at least 30 percent of his general unsecured debts over 5 years. Fourth, if a judge determines that a Chapter 7 filing is substantially unjustified, then that judge will be allowed to order

(See other side)

YEAS (97)				NAYS (1)		NOT VOTING (2)	
Republican (54 or 100%)		Democrats (43 or 98%)		Republicans (0 or 0%)	Democrats (1 or 2%)	Republicans (1)	Democrats (1)
Abraham	Helms	Akaka	Johnson		Wellstone	Warner- ²	Glenn- ²
Allard	Hutchinson	Baucus	Kennedy				
Ashcroft	Hutchison	Biden	Kerrey				
Bennett	Inhofe	Bingaman	Kerry				
Bond	Jeffords	Boxer	Kohl				
Brownback	Kempthorne	Breaux	Landrieu				
Burns	Kyl	Bryan	Lautenberg				
Campbell	Lott	Bumpers	Leahy				
Chafee	Lugar	Byrd	Levin				
Coats	Mack	Cleland	Lieberman				
Cochran	McCain	Conrad	Mikulski				
Collins	McConnell	Daschle	Moseley-Braun				
Coverdell	Murkowski	Dodd	Moynihan				
Craig	Nickles	Dorgan	Murray				
D'Amato	Roberts	Durbin	Reed				
DeWine	Roth	Feingold	Reid				
Domenici	Santorum	Feinstein	Robb				
Enzi	Sessions	Ford	Rockefeller				
Faircloth	Shelby	Graham	Sarbanes				
Frist	Smith, Bob	Harkin	Torricelli				
Gorton	Smith, Gordon	Hollings	Wyden				
Gramm	Snowe	Inouye					
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

a debtor's attorney to pay court costs related to that filing (for related debate, see vote No. 279), and, if a judge rejects a creditor's challenge of a Chapter 7 filing, then that judge will be allowed to order the creditor to pay the debtor's costs related to that challenge.

- **Enhanced Procedural Protections for Consumers.** Numerous new protections will be enacted, including: new penalties will be created for creditors who overstate the amount owed to them; creditors will not be allowed to contest the discharge of debts if they refused good-faith efforts to negotiate reasonable alternative repayment schedules; new penalties will apply to creditors who willfully violate reaffirmation agreements ("reaffirmation" refers to agreeing to remain bound by all or part of a debt regardless of bankruptcy); bankruptcy claims of lenders that materially violate certain requirements of the Truth In Lending Act in new loans made by such lenders will be prohibited; enhanced disclosure requirements will apply to credit extensions that are secured by dwellings; limits will be placed on consumers' liability for the unauthorized use of dual-use debit cards; new disclosure requirements will be enacted for open-end credit plans; certain information will be provided to debtors to discourage abusive reaffirmation practices, and the court will not approve reaffirmation agreements that do not meet specified standards; and judges will be able to waive bankruptcy filing fees when debtors cannot afford to pay them (see vote No. 280). Additionally, the Federal Reserve will study and report on certain credit lending practices, and it will be illegal to impose fees on or to cancel credit card customers for paying their bills on time and in full (see vote No. 273).

- **Improved Procedures for the Efficient Administration of the Bankruptcy System.** Numerous reforms will be enacted, including: debtors will be informed of their options before filing; procedures will be enacted to discourage bad-faith repeat filings; various time limits will be enacted to expedite proceedings; if a creditor enters a new debt to pay off a nondischargeable debt with the intent of discharging the new debt in bankruptcy, the new debt will be nondischargeable; debts entered in the 90 days before bankruptcy that are not for goods or services reasonably necessary for the maintenance or support of the debtor will be nondischargeable; additional bankruptcy judges will be appointed; domestic support obligations will have priority in bankruptcy proceedings and certain debts for alimony and child support will be nondischargeable; retirement savings will be protected from bankruptcy proceedings (see vote No. 276); postsecondary savings accounts for children will be protected from bankruptcy proceedings; and the homestead exemption will be capped at \$100,000, and it is the sense of the Senate that it should be capped at that level (the "homestead exemption" allows a debtor to shield all or a portion of the value of a home from bankruptcy proceedings; most States have a cap of \$40,000; 5 States do not have any cap).

- **Financial Instruments.** Several provisions will be enacted to clarify how particular types of financial agreements, many of which are relatively new, are treated in bankruptcy proceedings.

- **Ancillary and Other Cross-Border Cases.** Provisions will be enacted on insolvencies that cross national borders with the purposes of improving coordination with other countries' bankruptcy systems, creating greater legal certainty for trade and investment, protecting the interests of debtors and creditors, and facilitating the rescue of troubled businesses.

NOTE: Immediately prior to final passage, the Senate struck all after the enacting clause and inserted in lieu therefore the text of S. 1301, as amended.

Those favoring final passage contended:

In 1967, there were 191,729 nonbusiness bankruptcy cases; in 1997 there were 1,350,118. The reasons for the increase are varied, but no one disputes that a large number of people who are filing for bankruptcy are fully capable of paying off their debts. Many high-income Americans, are twisting the bankruptcy laws on a regular basis to avoid repaying their obligations. Too often, instead of carrying any stigma, bankruptcy is viewed as just another financial planning tool by many unprincipled wealthy people. Many low-income Americans also are abusing the process. Also, many low-income Americans are being abused by the process. They are being pressured into filing even when it is not their best financial option, they are victimized by unfair lending practices, and when they are in bankruptcy proceedings their interests are not protected and they are again taken advantage of, often by being coerced into entering reaffirmation agreements of debts that can be discharged and that had unfair terms to start. This bill takes a very balanced approach to all of the current problems. It will enact numerous consumer safeguards, and if it is possible for a consumer to pay off 30 percent of his or her debts over 5 years, then that consumer will enter into repayment plans under Chapter 13 instead of just escaping from all of the debt. Also, limits will be placed on repeat filers, the homestead exemption will be capped to stop rich people from buying mansions and then using bankruptcy to escape their debts, and dozens of other reforms will be enacted. This bill has very broad, bipartisan support. We urge our colleagues to vote in favor of final passage.

Those opposing final passage contended:

We think the only reason the Senate is considering this bill is to help credit card companies. They have been extending credit to people who do not have the financial means to handle the debt, and as a result those people are being driven into bankruptcy. The credit card companies, after ruining these people, want still more money. They have pushed for this bill primarily as a means of getting more of their bankrupt customers into the legal equivalent of a debtor's prison, Chapter 13, instead of letting them escape their clutches through Chapter 7. We oppose that effort, and thus oppose this bill.